Laborers' Local 334, Laborers' International Union of North America, AFL–CIO–CLC (Frederick Employment Services) *and* George Beadles *and* Lucretia Sturdivant *and* Mark H. Eagle *and* John M. Tyler. Cases 7–CB–7625, 7–CB–8144, 7–CB–9636, 7–CB–9643, 7–CB–9704, 7–CB–9877, and 7–CB–9827

April 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon charges filed by George Beadles, an individual, on August 1, 1988, in Case 7–CB–7625; by Lucretia Sturdivant, an individual, on December 26, 1989, in Case 7–CB–8144, as amended on April 9, 1990, on April 13, 1993, in Case 7–CB–9636, and on April 19, 1993, in Case 7–CB–9643; by Mark H. Eagle, an individual, on June 1, 1993, in Case 7–CB–9704, and on November 5, 1993, in Case 7–CB–9877; and by John M. Tyler, an individual, on September 21, 1993, in Case 7–CB–9827, the General Counsel of the National Labor Relations Board issued a consolidated amended complaint on March 29, 1994, against Laborers' Local 334, Laborers' International Union of North America, AFL–CIO–CLC, the Respondent, alleging that it has violated Section 8(b)(1)(A) and (2) of the Act. On March 31, 1994, the Respondent filed an answer admitting in part and denying in part the allegations in the amended complaint.

On April 25, 1994, the General Counsel issued a second consolidated amended complaint alleging that the Respondent has violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act.

By letter dated May 31, 1994, the Respondent withdrew its previously filed answer to the amended complaint in its entirety with the exception of its answer to paragraphs 33–36, that part of paragraph 44 which refers to paragraphs 33–36, and paragraph 45. The Respondent indicated that its withdrawal of its answer with respect to paragraphs 26 and 27 was conditioned on Charging Party Lucretia Sturdivant being made whole in respect to the matters alleged in those paragraphs as a result of a settlement in Case 7–CA–32505 which, at that time, was consolidated with the instant cases. The Respondent has not filed a separate answer to the second amended complaint which issued on April 25, 1994.[1]

On December 7, 1994, the Regional Director for Region 7 approved a settlement agreement in Case 7–CA–32505 providing, inter alia, that Charging Party Sturdivant be made whole for the losses she has suffered arising as a result of the conduct alleged in paragraphs 26 and 27 of the amended complaint and second amended complaint. On January 12, 1995, the Regional Director for Region 7 issued an order severing Case 7–CA–32505 from the instant cases.

On January 23, 1995, the General Counsel filed a Motion for Partial Summary Judgment on the Pleadings with the Board. On January 25, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On February 6, 1995, the General Counsel filed a statement in clarification in which he explained that Cases 7–CB–8144 and 7–CB–9643 are not part of his Motion for Partial Summary Judgment on the Pleadings and that if the Board granted the General Counsel's motion, those cases should be remanded to the Regional Director for a hearing. The Respondent filed no response to the Notice to Show Cause. The allegations in the motion are therefore undisputed.

Ruling on Motion for Partial Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the compliant, unless good cause is shown. The amended and second amended complaint each stated that unless an answer is filed within 14 days of service, ''all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' The Respondent's withdrawal of its answer to certain allegations in the complaint has the same effect as a failure to file an answer to those allegations, i.e., those complaint allegations must be considered to be admitted to be true.[2] Accordingly, we grant the General Counsel's Motion for Partial Summary Judgment on the Pleadings.[3]

We shall remand Cases 7–CB–8144 and 7–CB–9643 to the Regional Director for Region 7 for the purpose of arranging a hearing before an administrative law judge to determine the issues raised in those paragraphs of the second amended complaint to which the Respondent has not withdrawn its answer, i.e., paragraphs 33–36, that part of paragraph 44 which refers to paragraphs 33–36, and paragraph 45.

On the entire record, the Board makes the following

[1] The numbered allegations in the amended complaint and the second amended complaint are identical.

[2] See, e.g., *Navaro Mining, Inc*., 316 NLRB No. 23 (Jan. 27, 1995) (not reported in Board volumes); *Maislin Transport*, 274 NLRB 529 (1985).

[3] Inasmuch as the condition for the Respondent's withdrawal of its answer with respect to pars. 26 and 27 of the complaint has been met, i.e., that Charging Party Sturdivant was made whole for her losses in the settlement agreement in Case 7–CA–32505, we grant summary judgment with respect to those paragraphs of the complaint.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Employer, Frederick Employment Services, Inc., a corporation with an office and place of business in Detroit, Michigan, has been engaged in leasing employees and providing personnel administration services to various enterprises. During the year ending November 30, 1993, a representative period, Frederick Employment Services, Inc., in the course and conduct of its business operations, provided services valued in excess of $50,000 to the Employer, M & M Contracting Incorporated, within the State of Michigan.

At all material times, the Employer, M & M Contracting Incorporated, a corporation with an office and place of business in Detroit, Michigan, has been engaged in the building and construction industry as a demolition and evacuation contractor. During the year ending November 30, 1993, a representative period, M & M Contracting Incorporated, in the course and conduct of its business operations, purchased and received at its Detroit facility goods and materials valued in excess of $50,000 directly from sources located outside the State of Michigan.

At all material times, the Employer, ABB Resource Recovery Systems, a corporation, with an office and place of business in Detroit, Michigan, has been engaged in operating and maintaining a trash-to-energy incinerator facility in Detroit, Michigan—the Detroit Incinerator facility. At all material times, the Employer, Bechtel Construction Company, a corporation with an office and place of business in Detroit, Michigan, has been engaged in the building and construction industry as a general contractor. During calendar year 1991 and the year ending November 30, 1993, a representative period, Bechtel and ABB each, in conducting its business operations as described above, has purchased and received at its respective Detroit facilities goods and materials valued in excess of $50,000 directly from points outside the State of Michigan.

At all material times, the Employer, Eichleay Corporation, a corporation with its principal office in Pittsburgh, Pennsylvania, and an office and place of business at a jobsite in Wayne County, Michigan, as well as the operation of other jobsites in Michigan, has been engaged in the building and construction industry as a general contractor and in providing maintenance and engineering services. During calendar year 1988, a representative period, Eichleay, in the course and conduct of its business operations, purchased and received at its Michigan jobsites goods and materials valued in excess of $50,000 directly from points located outside the State of Michigan.

At all material times, the Employer, the Lathrop Company, Inc., a corporation with a principal office and place of business in Maumee, Ohio, and various jobsites in Michigan, has been engaged in the building and construction industry as a building and general contractor. During the year ending November 30, 1993, a representative period, Lathrop, in the course and conduct of its business operations, purchased and received at its Michigan jobsites goods and material valued in excess of $50,000 directly from points located outside the State of Michigan.

We find that the Employers, Frederick Employment Services, Inc., M & M Contracting Incorporated, Bechtel Construction Company, ABB Resource Recovery Systems, Eichleay Corporation, and the Lathrop Company, Inc., are each an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

At all material times, Employer Frederick has leased and supplied laborers and other employees to Employer M & M for employment at the Detroit Incinerator facility and other jobsites. At all material times, Employer M & M has possessed and exercised control over the labor relations policy and administered a common labor policy with Employer Frederick for the employees of Frederick at the Detroit Incinerator facility. We find that Employers Frederick and M & M have been joint employers of Frederick's employees utilized by Employer M & M at the Detroit Incinerator facility.

II. THE UNIT AND THE UNION'S REPRESENTATIVE STATUS

The following employees constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All laborer employees employed by the respective employers [Eichleay, Detroit Boiler Company, Giffin, Inc., Frederick, and M & M] for maintenance, repair, replacement and renovation in various plants within the geographical jurisdiction of Local Union No. 334, Laborers' International Union of North America, AFL–CIO, but excluding all general superintendents, superintendents, assistant superintendents, office and supervisory employees as defined in the Act.

At all material times, and by virtue of a series of collective-bargaining agreements known as the ''National Maintenance Agreement'' or ''Maintenance Agreement,'' entered into between Laborers' International Union of North America, AFL–CIO–CLC, and various employers, including Eichleay, Detroit Boiler, Giffin, Frederick, and M & M, beginning before 1982, and continuing to date, covering laborer employees in appropriate collective-bargaining units, the Respondent, as the International Union's agent for purposes of administering the maintenance agreements within the Respondent's geographic jurisdiction, is

now, and has been at all material times, the collective-bargaining agent within the meaning of Section 8(f) of the Act of the laborer unit employees in the collective-bargaining units encompassed by the successive maintenance agreements.

At all material times through about October 1991, the Respondent, by its agents, operated an informal nonexclusive job referral system for its members, and a written nonexclusive job referral system for its members. At all material times since about 1985, the Respondent and various employers, including those set forth below, entered into and have maintained various agreements and have engaged in referral and hiring practices requiring that the Respondent be the exclusive source of employees for the Employers involved. The following employers, agreements, and projects have been included: Frederick, M & M, Bechtel, and ABB at the Detroit Incinerator project under the ''International Presidential Agreement''; Bateson-R.E. Dailey, a Joint Venture, under the project agreement at the Detroit Veteran's Administration Hospital-Detroit Medical Center construction site; and Bennett & Wright, Inc., project manager, under the Dodge City Complex project agreement, Chrysler Corporation's Dodge City Complex in Warren, Michigan, and, by practice, under the maintenance agreement, by Crudo Brothers at the Chrysler Corporation Jefferson North Assembly Plant, in Detroit, Michigan.

III. ALLEGED UNFAIR LABOR PRACTICES

Since about October 13, 1992, the Respondent, by its agent Ron Allen, has failed to represent Charging Party Sturdivant, an employee of Employers Frederick and M & M in the laborer unit, by its prolonged delay and refusal to arbitrate her October 24, 1991 grievance over her discharge or layoff from the Detroit Incinerator jobsite by Employers Frederick, M & M, ABB, and Bechtel. The Respondent took this action against Sturdivant because she had filed prior Board unfair labor practice charges and had engaged in other internal union activities protected by the Act and to discourage her from all such activities.

Since about July 1, 1988, and again about August 1, 1988, July 1989, October 1989, and November 1989, laborer unit employees of Employers Eichleay and Detroit Boiler requested of the Respondent's agent, Alton McDaniel Sr., that he make available to them copies of the various collective-bargaining agreements which applied to them in connection with their respective employment by Eichleay and Detroit Boiler at their various jobsites located within Wayne County, Michigan. Since about July 1, 1988, the Respondent, by its agents including Alton McDaniel Sr., has failed and refused, and continues to fail and refuse, to make available to Charging Parties Beadles and Sturdivant and other laborer unit employees similarly situated, copies of its collective-bargaining agreements with Eichleay, Detroit Boiler, and other employees, which agreements contain rates of pay and other terms and conditions of employment of the laborer unit employees represented by the Respondent.

By these actions with regard to Charging Parties Sturdivant and Beadles, and in view of the Respondent's representative status as described above, the Respondent has failed to represent Sturdivant and Beadles, and other employees in the laborer units represented by it, for reasons which are unfair, arbitrary, invidious, and a breach of the duty of fair representation owed the employees it represents.

Commencing about December 30, 1992, Charging Party Eagle, a member of the Respondent, verbally and in writing, has requested that Respondent's agents, including Vern Covington, furnish him information relevant to the operation of the Respondent's referral systems, described above. This request included: all records pertaining to the Respondent's hiring and referral practices, monthly employer contribution reports made on behalf of employee-members for the prior 6-month period; the ''out-of-work'' list or weekly sign-in list for the prior 6-month period; referral cards issued to employee-members for the past 6 months, and stewards' reports for the past 6 months. Commencing about December 30, 1992, and continuing to date, the Respondent, including its agent Vern Covington, has failed and refused to furnish to Eagle any of the information he requested, as described above.

About May 27, 1992, the Respondent, through its agents Vern Covington, William Bartlett, Carroll ''Doc'' Finney, and Ronald C. Allen, threatened Charging Party Tyler that the Respondent would henceforth refuse to refer him to jobs because of Tyler's support of a rival candidate for election to internal union office.

Since about May 27, 1993, on various dates, the Respondent, through its agents Vern Covington, Carroll ''Doc'' Finney, and Ronald C. Allen, impliedly threatened to refuse to refer Tyler to jobs by telling him to seek employment from the rival candidate whom Tyler had supported in the internal union election.

At all material times, the Respondent has maintained a local union rule under which employee-members who file allegedly ''frivolous'' unfair labor practice charges with the Board without first exhausting internal union constitutional remedies may be sued by the Respondent for the attorney and/or litigation costs of the Union's defense against these Board charges.

About January 7, 1994, the Respondent, by its agent Ron Allen, at its Detroit office, threatened to file a civil law suit against Charging Party Eagle because Eagle had filed Board charges against the Respondent and in retaliation for Eagle's internal union activities protected by Section 7 of the Act.

We find that by all of the actions described above, the Respondent has violated Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has violated Section 8(b)(1)(A) by: (1) failing to represent an employee because she had filed prior Board unfair labor practice charges and had engaged in other internal union activities protected by the Act, and to discourage her from all such activities; (2) failing to provide unit employees with copies of collective-bargaining agreements to which the Respondent is a party, and with information relevant to the Union's referral systems; (3) threatening and impliedly threatening an employee that it would refuse to refer him to jobs because of his internal union activities, and threatening an employee with a civil law suit because he had filed Board charges and to retaliate for his internal union activities; and (4) maintaining a local union rule under which employee-members who filed allegedly ''frivolous'' unfair labor practice charges with the Board without first exhausting internal union constitutional remedies may be sued by the Respondent for the attorney and/or litigation costs of the Respondent's defense against these Board charges.

The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. These affirmative actions shall include with respect to Charging Party Sturdivant (1) requesting that Employers Frederick, M & M, ABB, and Bechtel reinstate her to her former position or, if the position no longer exists, to a substantially equivalent position, and (2) jointly and severally with Employers Frederick, M & M, ABB, and Bechtel making Sturdivant whole, with interest, for any loss of earnings and other benefits she may have suffered as a result of her layoff or discharge until such time as she is reinstated by the above-named Employers or she obtains other substantially equivalent employment. Loss of earnings shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Interest shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be ordered to remove from its files any reference to Sturdivant's unlawful layoff or discharge and shall be required to notify Sturdivant, in writing, of its actions and inform her that her unlawful layoff or discharge shall not be used as a basis for future action against her. Further, the Union shall be required to ask Employers Frederick, M & M, ABB, and Bechtel to remove from their files any reference to Sturdivant's layoff or discharge and shall notify Sturdivant that it has asked these Employers to do so.[4]

The affirmative actions shall also include providing unit employees all requested copies of the Respondent's collective-bargaining agreements with employers, and providing referral information on request. The affirmative actions further shall include the rescission of the local union rule found to be in violation of Section 8(b)(1)(A) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Laborers' Local 334, Laborers' International Union of North America, AFL–CIO–CLC, Detroit, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to represent a unit employee, including by a prolonged delay or refusing to arbitrate a grievance over a discharge or layoff, because the employee has filed prior Board unfair labor practice charges or engaged in other internal union activities protected by the Act or to discourage the employee from all such activities.

(b) Failing and refusing to make available to unit employees copies of its collective-bargaining agreements with employers, which agreements contain rates of pay and other terms and conditions of employment of these unit employees.

(c) Failing and refusing to provide unit employees with referral information on request as it pertains to all agreements and practices where the Respondent operates an exclusive referral system.

(d) Threatening employees that it will refuse to refer them to jobs because they support a rival candidate for election to internal union office.

(e) Impliedly threatening employees to refuse to refer them to jobs by telling them to seek employment from a rival candidate whom the employees supported in the internal union election.

(f) Maintaining a local union rule under which employee-members who file allegedly ''frivolous'' unfair labor practice charges with the Board without first exhausting internal union constitutional remedies may be sued by the Respondent for the attorney and/or litigation costs of the Respondent's defense against the Board charges.

(g) Threatening to file civil law suits against employees because the employees had filed Board charges against the Respondent and in retaliation for the em-

[4] See *Laborers Local 334 (Burdco Environmental)*, 303 NLRB 350 (1991); *R. H. Macy & Co.*, 266 NLRB 858 (1983).

ployees' internal union activities protected by Section 7 of the Act.

(h) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Request that Employers Frederick Employment Services, Inc., M & M Contracting Incorporated, Bechtel Construction Company, and ABB Resource Recovery Systems reinstate unit employee Lucretia Sturdivant to her former position or, if the position no longer exists, to a substantially equivalent position.

(b) Jointly and severally with Employers Frederick, M & M, ABB, and Bechtel make Sturdivant whole for any loss of earnings or other benefits suffered as a result of her layoff or discharge until such time as she is reinstated by the above-named Employers or obtains other substantially equivalent employment, with interest computed in the manner prescribed in the remedy section of this decision.

(c) Remove from its files, and ask Employers Frederick, M & M, ABB, and Bechtel to remove from their files, any reference to Lucretia Sturdivant's layoff or discharge and notify her, in writing, that this has been done and that evidence of this action shall not be used as a basis for future action against her.

(d) Provide to unit employees George Beadles and Lucretia Sturdivant, and other similarly situated employee-members of the laborer units under the maintenance agreements, copies of these contracts and other collective-bargaining agreements applicable to them to which the Respondent is a party.

(e) Provide to Charging Party Mark H. Eagle all referral information he has requested as it pertains to all agreements and practices where the Respondent operates an exclusive referral system.

(f) Rescind and cease giving effect to the local union rule under which employee-members who file allegedly ''frivolous'' unfair labor practice charges with the Board without first exhausting internal union constitutional remedies may be sued by the Respondent for the attorney and litigation costs of the Respondent's defense against the Board charges.

(g) Post at its facility in Detroit, Michigan, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Forward a sufficient number of signed copies of the notice to the Regional Director for Region 7 for posting by Frederick Employment Services, M & M Contracting Incorporated, ABB, and Bechtel, at each Employer's place of business in Detroit, Michigan (including the Detroit Incinerator facility for Employer ABB), and Eichleay Corporation at its place of business in Wayne County, Michigan, and the Lathrop Company, Inc. at its jobsites in Michigan.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment on the Pleadings is granted.

IT IS FURTHER ORDERED that Cases 7–CB–8144 and 7–CB–9643 are remanded to the Regional Director for Region 7 for the purpose of arranging a hearing before an administrative law judge, and that the Regional Director is authorized to issue notice of this hearing.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to represent an employee, including by a prolonged delay or refusal to arbitrate a grievance over a layoff or discharge, because the employee has filed prior Board unfair labor practice charges or engaged in other internal union activities protected by the Act or to discourage the employee from all such activities.

WE WILL NOT fail and refuse to make available to unit employees copies of our collective-bargaining agreements with employers, which agreements contain rates of pay and other terms and conditions of employment of these employees.

WE WILL NOT fail and refuse to provide unit employees with referral information on request as it pertains to all agreements and practices where we operate an exclusive referral system.

WE WILL NOT threaten employees that we will refuse to refer them to jobs because they support a rival candidate for election to internal union office.

WE WILL NOT impliedly threaten employees to refuse to refer them to jobs by telling them to seek

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

employment from a rival candidate whom the employees had supported in the internal union election.

WE WILL NOT maintain a local union rule under which employee-members who file allegedly ''frivolous'' unfair labor practice charges with the Board without first exhausting internal union constitutional remedies may be sued by us for the attorney and/or litigation costs of our defense against the Board charges.

WE WILL NOT threaten to file civil law suits against employees because the employees had filed Board charges against us and in retaliation for the employees' internal union activities protected by Section 7 of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL request that Employers Frederick Employment Services, Inc., M & M Contracting Incorporated, Bechtel Construction Company, and ABB Resource Recovery Systems reinstate employee Lucretia Sturdivant to her former position or, if the position no longer exists, to a substantially equivalent position.

WE WILL jointly and severally with Employers Frederick, M & M, ABB, and Bechtel make Lucretia Sturdivant whole for any loss of earnings or other benefits suffered as a result of her layoff or discharge by the above-named Employers until such time as she is reinstated by them or obtains other substantially equivalent employment, with interest.

WE WILL remove from our files and WE WILL ask the above-named Employers to remove from their files any reference to the layoff or discharge of Lucretia Sturdivant, and WE WILL notify her, in writing, that this has been done and that evidence of this action shall not be used as a basis for future action against her.

WE WILL provide to employees George Beadles and Lucretia Sturdivant, and other similarly situated employee-members of the laborer units under the maintenance agreements, copies of these contracts and other collective-bargaining agreements applicable to them to which we are a party.

WE WILL provide to employee Mark H. Eagle all referral information he has requested as it pertains to all agreements and practices where we operate an exclusive referral system.

WE WILL rescind and cease giving effect to the local union rule under which employee-members who file allegedly ''frivolous'' unfair labor practice charges with the Board without first exhausting internal union constitutional remedies may be sued by us for the attorney and/or litigation costs of our defense against the Board charges.

LABORERS' LOCAL 334, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO–CLC